

Introduced by Senator Roth

January 12, 2016

An act to amend Section 273.5 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 870, as amended, Roth. Domestic violence.

Existing law makes it a crime, punishable by a fine, by imprisonment, or by both a fine and imprisonment, for a person to willfully inflict corporal ~~injury~~ *injury, including, but not limited to, by strangulation or suffocation*, resulting in a traumatic condition upon a person with whom the defendant has been in a specified domestic relationship.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

This bill would make it a crime, punishable by a fine, by imprisonment, or by both a fine and imprisonment, for a person to willfully inflict corporal injury resulting in a traumatic condition by strangulation or suffocation upon a person with whom the defendant has been in a specified domestic relationship. By increasing the duties of local prosecutors, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 273.5 of the Penal Code is amended to
2 read:
- 3 273.5. (a) (1) Any person who willfully inflicts corporal
4 injury resulting in a traumatic condition upon a victim described
5 in subdivision (b) is guilty of a felony, and upon conviction thereof
6 shall be punished by imprisonment in the state prison for two,
7 three, or four years, or in a county jail for not more than one year,
8 or by a fine of up to six thousand dollars (\$6,000), or by both that
9 fine and imprisonment.
- 10 (2) Any person who willfully inflicts corporal injury resulting
11 in a traumatic condition upon a victim described in subdivision
12 (b), where the corporal injury resulting in a traumatic condition
13 is caused in whole or in part by strangulation or suffocation, is
14 guilty of a felony, and upon conviction thereof shall be punished
15 by imprisonment in the state prison for two, three, or four years,
16 or in a county jail for not more than one year, or by a fine of up
17 to six thousand dollars (\$6,000), or by both that fine and
18 imprisonment. For purposes of this paragraph, "strangulation"
19 and "suffocation" include impeding the normal breathing or
20 circulation of the blood of a person by applying pressure on the
21 throat or neck.
- 22 (b) Subdivision (a) shall apply if the victim is or was one or
23 more of the following:
- 24 (1) The offender's spouse or former spouse.
25 (2) The offender's cohabitant or former cohabitant.
26 (3) The offender's fiancé or fiancée, or someone with whom
27 the offender has, or previously had, an engagement or dating
28 relationship, as defined in paragraph (10) of subdivision (f) of
29 Section 243.
30 (4) The mother or father of the offender's child.
- 31 (c) Holding oneself out to be the husband or wife of the person
32 with whom one is cohabiting is not necessary to constitute
33 cohabitation as the term is used in this section.
- 34 (d) As used in this section, "traumatic condition" means a
35 condition of the body, such as a wound, or external or internal

1 injury, ~~including, but not limited to, injury as a result of~~
2 ~~strangulation or suffocation~~, whether of a minor or serious nature,
3 caused by a physical force. ~~For purposes of this section,~~
4 ~~“strangulation” and “suffocation” include impeding the normal~~
5 ~~breathing or circulation of the blood of a person by applying~~
6 ~~pressure on the throat or neck.~~

7 (e) For the purpose of this section, a person shall be considered
8 the father or mother of another person’s child if the alleged male
9 parent is presumed the natural father under Sections 7611 and 7612
10 of the Family Code.

11 (f) (1) Any person convicted of violating this section for acts
12 occurring within seven years of a previous conviction under
13 subdivision (a), or subdivision (d) of Section 243, or Section 243.4,
14 244, 244.5, or 245, shall be punished by imprisonment in a county
15 jail for not more than one year, or by imprisonment in the state
16 prison for two, four, or five years, or by both imprisonment and a
17 fine of up to ten thousand dollars (\$10,000).

18 (2) Any person convicted of a violation of this section for acts
19 occurring within seven years of a previous conviction under
20 subdivision (e) of Section 243 shall be punished by imprisonment
21 in the state prison for two, three, or four years, or in a county jail
22 for not more than one year, or by a fine of up to ten thousand
23 dollars (\$10,000), or by both that imprisonment and fine.

24 (g) If probation is granted to any person convicted under
25 subdivision (a), the court shall impose probation consistent with
26 the provisions of Section 1203.097.

27 (h) If probation is granted, or the execution or imposition of a
28 sentence is suspended, for any defendant convicted under
29 subdivision (a) who has been convicted of any prior offense
30 specified in subdivision (f), the court shall impose one of the
31 following conditions of probation:

32 (1) If the defendant has suffered one prior conviction within the
33 previous seven years for a violation of any offense specified in
34 subdivision (f), it shall be a condition of probation, in addition to
35 the provisions contained in Section 1203.097, that he or she be
36 imprisoned in a county jail for not less than 15 days.

37 (2) If the defendant has suffered two or more prior convictions
38 within the previous seven years for a violation of any offense
39 specified in subdivision (f), it shall be a condition of probation, in

1 addition to the provisions contained in Section 1203.097, that he
2 or she be imprisoned in a county jail for not less than 60 days.

3 (3) The court, upon a showing of good cause, may find that the
4 mandatory imprisonment required by this subdivision shall not be
5 imposed and shall state on the record its reasons for finding good
6 cause.

7 (i) If probation is granted upon conviction of a violation of
8 subdivision (a), the conditions of probation may include, consistent
9 with the terms of probation imposed pursuant to Section 1203.097,
10 in lieu of a fine, one or both of the following requirements:

11 (1) That the defendant make payments to a battered women's
12 shelter, up to a maximum of five thousand dollars (\$5,000),
13 pursuant to Section 1203.097.

14 (2) (A) That the defendant reimburse the victim for reasonable
15 costs of counseling and other reasonable expenses that the court
16 finds are the direct result of the defendant's offense.

17 (B) For any order to pay a fine, make payments to a battered
18 women's shelter, or pay restitution as a condition of probation
19 under this subdivision, the court shall make a determination of the
20 defendant's ability to pay. An order to make payments to a battered
21 women's shelter shall not be made if it would impair the ability
22 of the defendant to pay direct restitution to the victim or
23 court-ordered child support. If the injury to a married person is
24 caused in whole or in part by the criminal acts of his or her spouse
25 in violation of this section, the community property may not be
26 used to discharge the liability of the offending spouse for restitution
27 to the injured spouse, required by Section 1203.04, as operative
28 on or before August 2, 1995, or Section 1202.4, or to a shelter for
29 costs with regard to the injured spouse and dependents, required
30 by this section, until all separate property of the offending spouse
31 is exhausted.

32 (j) Upon conviction under subdivision (a), the sentencing court
33 shall also consider issuing an order restraining the defendant from
34 any contact with the victim, which may be valid for up to 10 years,
35 as determined by the court. It is the intent of the Legislature that
36 the length of any restraining order be based upon the seriousness
37 of the facts before the court, the probability of future violations,
38 and the safety of the victim and his or her immediate family. This
39 protective order may be issued by the court whether the defendant

1 is sentenced to state prison or county jail, or if imposition of
2 sentence is suspended and the defendant is placed on probation.

3 (k) If a peace officer makes an arrest for a violation of this
4 section, the peace officer is not required to inform the victim of
5 his or her right to make a citizen's arrest pursuant to subdivision
6 (b) of Section 836.

7 *SEC. 2. No reimbursement is required by this act pursuant to*
8 *Section 6 of Article XIII B of the California Constitution because*
9 *the only costs that may be incurred by a local agency or school*
10 *district will be incurred because this act creates a new crime or*
11 *infraction, eliminates a crime or infraction, or changes the penalty*
12 *for a crime or infraction, within the meaning of Section 17556 of*
13 *the Government Code, or changes the definition of a crime within*
14 *the meaning of Section 6 of Article XIII B of the California*
15 *Constitution.*

16 ~~SECTION 1. Section 273.5 of the Penal Code is amended to~~
17 ~~read:~~

18 ~~273.5. (a) Every person who willfully inflicts corporal injury~~
19 ~~that results in a traumatic condition upon a victim described in~~
20 ~~subdivision (b) is guilty of a felony, and upon conviction thereof~~
21 ~~shall be punished by imprisonment in the state prison for two,~~
22 ~~three, or four years, or in a county jail for not more than one year,~~
23 ~~or by a fine of up to six thousand dollars (\$6,000), or by both that~~
24 ~~fine and imprisonment.~~

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26 ~~of the following:~~

27 ~~(1) The offender's spouse or former spouse.~~

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34 ~~(e) Holding oneself out to be the husband or wife of the person~~
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37 ~~(d) As used in this section, "traumatic condition" means a~~
38 ~~condition of the body, such as a wound, or external or internal~~
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1 caused by a physical force. For purposes of this section,
2 “strangulation” and “suffocation” include impeding the normal
3 breathing or circulation of the blood of a person by applying
4 pressure on the throat or neck.

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6 the father or mother of another person’s child if the alleged male
7 parent is presumed the natural father under Sections 7611 and 7612
8 of the Family Code.

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10 occurring within seven years of a previous conviction under
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23 subdivision (a), the court shall impose probation consistent with
24 the provisions of Section 1203.097.

25 (h) If probation is granted, or the execution or imposition of a
26 sentence is suspended, for a defendant convicted under subdivision
27 (a) who has been convicted of a prior offense specified in
28 subdivision (f), the court shall impose one of the following
29 conditions of probation:

30 (1) If the defendant has suffered one prior conviction within the
31 previous seven years for a violation of an offense specified in
32 subdivision (f), it shall be a condition of probation, in addition to
33 the provisions contained in Section 1203.097, that he or she be
34 imprisoned in a county jail for not less than 15 days.

35 (2) If the defendant has suffered two or more prior convictions
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38 addition to the provisions contained in Section 1203.097, that he
39 or she be imprisoned in a county jail for not less than 60 days.

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3 ~~imposed and shall state on the record its reasons for finding good~~
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10 ~~shelter, up to a maximum of five thousand dollars (\$5,000),~~
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